

REMARKS

The Office Action dated January 27, 2004 has been carefully considered. In the Office Action, the Patent Examiner did not consider claims 76-78, and 80-82 due to a restriction requirement against certain newly added dependent claims, allowed claims 47-55 and 57-59, and issued a § 112 rejection against claims 2, 38, and 83. Certain prior art rejections were also advanced. Independent claims 1, 15 and 60 have been amended to include the limitations of dependent claims 76, 78 and 80 respectively (partial importation of these restricted dependent claims). Dependent claim 2 has been amended to independent form. Claims 76, 78 and 80 have thus been cancelled.

First, with respect to the restriction requirement, reconsideration is respectfully requested since the express terms of the Federal Regulation, namely 37 CFR § 1.45 as cited by the Examiner, explicitly limit such restriction to "claims directed to an invention distinct and independent of the invention previously claimed". In this case, claims 76-78 and 80-82 are "dependent", not "independent" of the invention previously claimed as set forth in the independent claims. This is inherent by virtue of being dependent claims (the Examiner should also reference the restriction practice set forth in the MPEP which generally indicates that a generic claim precludes the issuance of a restriction requirement). Dependent claims 76, 78, and 80 have been inserted into independent claims to narrow issues in this application and therefore a first action on these claims is solicited.

With respect to the §112 rejections, Applicant requests reconsideration. In particular, FIG. 1 explicitly shows the binder material 14 sprayed in front of and not intersecting the aggregate material 16 (See also FIG. 3). The trajectories of binder material 14 and aggregate material 16 as illustrated in FIG. 1 are in fact non-intersecting. Removal of this rejection is solicited.

Furthermore, claim 83 does not recite non-intersecting trajectories, and removal of the § 112 rejection against claim 83 is solicited. Since this is the only rejection advanced against claim 83, Applicant requests an indication of allowance of claim 83. Claim 38 should also likewise be allowable, since the anticipation rejection at paragraph 3 cannot stand, since O'Brien et al. does not prevent intermixing of asphalt binder and aggregate, but specifically requires such intermixing (the whole purpose of that invention as articulated below).

Turning to the prior art rejections, dependent claims are imported into the independent claim 1, 15 and 60 to more clearly distinguish the prior art. These claims as amended result in a different paved surface than O'Brien et al. The amendments make clear that a different finished pavement is achieved than O'Brien et al. even when combined with other references.

As a preliminary matter, Applicant agrees that O'Brien et al. is the closest prior art. However, O'Brien et al. is directed toward a chipsealer that addresses two different problems in chipsealing, (1) the problem of a thin chipseal pavement; and (2) the problem of windshield breakage due to chips. The express solution is dropping more aggregate and coating both the roadway and the falling aggregate on both sides with binder material via four different sets of nozzles. It is in effect a material hog and has nothing to do with the problems solved by the present invention, namely, the slight bumps and road imperfections caused by excessively stopping a chipseal process for each refill operation.

While O'Brien et al. does discuss the trailer being incorporated into a self propelled vehicle, once that is done or modified by any of the cited art, the configuration of four sets of nozzles still remain since O'Brien et al. provides a specific solution. The claimed invention (with the included amendments) differentiates the combination of O'Brien et al. with any of the prior art and results in a different finished product. The other prior art does not solve these deficiencies of O'Brien et al. and should not modify O'Brien et al. in a manner directly contrary to the solution provided by O'Brien et al. Further, none of the secondary prior art relied upon appears to deal specifically with chipsealing or the problems or solutions faced thereby.

As discussed above, the present invention is also directed toward a different problem than O'Brien et al., namely, discontinuous chipsealing which has occurred in the prior art and which results in bumps and road imperfections. With the present invention as now claimed, material is not wasted on a thicker pavement. Instead, according to the present invention refilling issues and material holding capacity are important, if acceptable rates of chipsealing are to be reached comparable to chipsealing of the past. Furthermore, with less binder material and less exposed binder material the rollers of subsequent roller vehicles are not as prone to stick to the rollers as the products of the cited references.

The claims as amended provide a different finished product in the following respects:

(1) according to claim 1 (or method of claim 83), the configuration results in asphalt not being subsequently dumped on over the aggregate; and

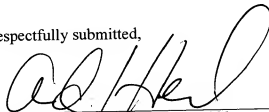
(2) according to the configuration specified in claims 2 or 60, asphalt is not sprayed onto the aggregate as it falls (similar to method claims 15, 38 and 83).

These claimed distinctions adequately distinguish the prior art and should therefore put the application in condition for allowance (claims 47-55 and 57-59 have been previously allowed). Further distinctions are also present in 77, 79, 81 and 82, and the Examiner is requested to also examine these claims.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. J. Heinisch', written over a horizontal line.

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